APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/816,709	04/02/2004	Sid Chaudhuri	113261 CON	1194

7590	09/21/2004

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EXAMINER
TRAN, PHUC H

ART UNIT	PAPER NUMBER
2666	

DATE MAILED: 09/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	**Applicant(s)**
Office Action Summary	10/816,709	CHAUDHURI ET AL.
	Examiner	**Art Unit**	
	PHUC H TRAN	2666	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-3* is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *3* is/are allowed.

6)☒ Claim(s) *1 and 2* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All   b)☐ Some *   c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
   Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
   Paper No(s)/Mail Date. _____ .

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

Claim Objections

1.   Claim 1 is objected to because of the following informalities: "are are" in line 2 need to

delete one "are". Appropriate correction is required.

Double Patenting

2.   The nonstatutory double patenting rejection is based on a judicially created doctrine
grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or
improper timewise extension of the "right to exclude" granted by a patent and to prevent possible
harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed.
Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686
F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA
1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).
        A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to
overcome an actual or provisional rejection based on a nonstatutory double patenting ground
provided the conflicting application or patent is shown to be commonly owned with this
application. See 37 CFR 1.130(b).
        Effective January 1, 1994, a registered attorney or agent of record may sign a terminal
disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37
CFR 3.73(b).

3.   Claims 1-2 are rejected under the judicially created doctrine of obviousness-type double

patenting as being unpatentable over claim 1 and 9 of U.S. Patent No. 6757243.

        For example:

Application No. 10/816709	Patent No. 6,757,243 B1
1. A method for use in a network in which a plurality of payloads are **initially carried on a link of** a path are over said path in accordance with a predetermined protocol, the method comprising: utilizing a tandem connection layer of said protocol, in response to a failure in a link in the path, to combine and manage said payloads as a single logical **entity on at least one other link** independent of the different payload capacities of said plurality of payloads and without individually rerouting each payload, the management of said single logical entity being based on information embedded in the tandem connection layer of the protocol.	1. A method for use in a network in which a plurality of payloads are routed over a path in accordance with a predetermined protocol, the method comprising: utilizing a tandem connection layer of said protocol, in response to a failure in a link in the path, to combine and manage said payloads as a single logical entity independent of the different payload capacities of said plurality of payloads and without individually rerouting each payload, the management of said single logical entity being based on information embedded in the tandem connection layer of the protocol.

| 2. An apparatus for routing data over a network in which a plurality of payloads are routed **on a link in** a path in accordance with a predetermined protocol, the apparatus comprising:
 (a) a processor;
 (b) a port; and
 (c) a memory coupled to said port and said processor, said memory storing instructions adapted to be executed by said processor to utilize a tandem connection layer of said protocol, in response to a failure of said link, to combine and manage said payloads as a single logical entity **on at least one other link** independent of the different payload capacities of said plurality of payloads and without individually rerouting each payload, the management of said single logical entity being based on information embedded in the tandem connection layer of the protocol. | 9. An apparatus for routing data packets over a network in which a plurality of payloads are routed over a path in accordance with a predetermined protocol, the apparatus comprising:
 (a) a processor;
 (b) a port; and
 (c) a memory coupled to said port and said processor, said memory storing instructions adapted to be executed by said processor to utilize a tandem connection layer of said protocol, in response to a failure in a link in the path, to combine and manage said payloads as a single logical entity independent of the different payload capacities of said plurality of payloads and without individually rerouting each payload, the management of said single logical entity being based on information embedded in the tandem connection layer of the protocol. |

2.   Although the conflicting claims are not identical, they are not patentably distinct from each other because:

- For claims 1 & 2, The different between Applicant and Patent are: Applicant teaches "payload initially carried on a link of a path" , "single logical entity on at least one other link independent"; The Patent teaches "payload are routed over a path" , " single logical entity independent". It has been held that the omission of an element and its function is an obvious expedient if the remaining elements perform the same function as before. In re karlson, 136 USPQ 184 (CCPA). Also note Ex Parte Raine, 168 USPQ 375 (bd. App. 1969); omission of a reference element whose function is not need would be obvious to one skill in the art.

Allowable Subject Matter

3.   Claim 3 is allowed.

Conclusion

4.   The prior art made of record and not relied upon is considered pertinent to applicant's

disclosure. See form PTO-892.

    Any inquiry concerning this communication or earlier communications from the
examiner should be directed to PHUC H TRAN whose telephone number is (571) 272-3172.
The examiner can normally be reached on M-F (8-4:30).
    If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, RAO SEEMA can be reached on (571)272-3174. The fax phone number for the
organization where this application or proceeding is assigned is 703-872-9306.
    Information regarding the status of an application may be obtained from the Patent
Application Information Retrieval (PAIR) system. Status information for published applications
may be obtained from either Private PAIR or Public PAIR. Status information for unpublished
applications is available through Private PAIR only. For more information about the PAIR
system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR
system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Assistant Examiner
Art Unit 2664

P.t
9/18/04

DANG TON
PRIMARY EXAMINER